

# Attachment 1

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**From:** D. Brandon Trice <[btrice@kaplanmartin.com](mailto:btrice@kaplanmartin.com)>

**Sent:** Thursday, May 1, 2025 12:37:28 PM

**To:** Poscabelo, Christine (USANYS) <[Christine.Poscabelo@usdoj.gov](mailto:Christine.Poscabelo@usdoj.gov)>; Dror Ladin <[dladin@earthjustice.org](mailto:dladin@earthjustice.org)>; Maximilian Crema <[mcrema@kaplanmartin.com](mailto:mcrema@kaplanmartin.com)>; Harned, Christian (LAW) <[charned@law.nyc.gov](mailto:charned@law.nyc.gov)>; Frank, Andrew <[Andrew.Frank@ag.ny.gov](mailto:Andrew.Frank@ag.ny.gov)>; Roberta Kaplan <[RKaplan@kaplanmartin.com](mailto:RKaplan@kaplanmartin.com)>; Amy Cassidy <[acassidy@sprlaw.com](mailto:acassidy@sprlaw.com)>; Morgan, Elizabeth <[Elizabeth.Morgan@ag.ny.gov](mailto:Elizabeth.Morgan@ag.ny.gov)>; [ch04374@recap.email](mailto:ch04374@recap.email) <[ch04374@recap.email](mailto:ch04374@recap.email)>; efile <[efile@earthjustice.org](mailto:efile@earthjustice.org)>; Mariana Lo <[mlo@earthjustice.org](mailto:mlo@earthjustice.org)>; Elizabeth Knauer <[eknauer@sprlaw.com](mailto:eknauer@sprlaw.com)>; [nduncan@sprlaw.com](mailto:nduncan@sprlaw.com) <[nduncan@sprlaw.com](mailto:nduncan@sprlaw.com)>; jnelson <[jnelson@sprlaw.com](mailto:jnelson@sprlaw.com)>; Mark Chertok <[mchertok@sprlaw.com](mailto:mchertok@sprlaw.com)>; Taylor, Nathan (Law) <[ntaylor@law.nyc.gov](mailto:ntaylor@law.nyc.gov)>; Dane Warren <[dwarren@sprlaw.com](mailto:dwarren@sprlaw.com)>; Docketing <[docketing@kaplanmartin.com](mailto:docketing@kaplanmartin.com)>; Reo, Chris (Law) <[creo@law.nyc.gov](mailto:creo@law.nyc.gov)>; Wagner, Monica <[Monica.Wagner@ag.ny.gov](mailto:Monica.Wagner@ag.ny.gov)>

**Cc:** Farber, David (USANYS) <[David.Farber@usdoj.gov](mailto:David.Farber@usdoj.gov)>; Tarczynska, Dominika (USANYS) <[Dominika.Tarczynska@usdoj.gov](mailto:Dominika.Tarczynska@usdoj.gov)>; Elliott, Stephen M. (CIV) <[Stephen.M.Elliott@usdoj.gov](mailto:Stephen.M.Elliott@usdoj.gov)>; Bruns, Michael (CIV) <[Michael.Bruns@usdoj.gov](mailto:Michael.Bruns@usdoj.gov)>

**Subject:** Re: [EXTERNAL] RE: Activity in Case 1:25-cv-01413-LJL Metropolitan Transportation Authority et al v. Duffy et al Letter

Christine,

As you note below, Secretary Duffy's April 21 letter does not claim to rescind the government's purported termination of the VPPP agreement. He states: "On February 19, 2025, I terminated that agreement." And he has now threatened that various means of enforcement of that termination will occur "on or after May 28, 2025." The Secretary's threats to take broad retaliatory actions as a result of Plaintiffs' refusal to comply with his unlawful termination of the VPPP Agreement present a defined controversy that the parties are clearly capable of briefing now, and the point of our proposal is to avoid a situation where the parties are briefing, and the court is dealing with, an emergency TRO if the government takes the action it has threatened.

Again, if the government will represent that it will not take any enforcement action pending a final determination of Plaintiffs' challenge to the purported termination, then there is no need to brief a preliminary injunction now. Alternatively, we are amenable to a stay of enforcement if the government provides 30 days' notice of any intent to enforce, so the parties can operate on a reasonable briefing schedule. Otherwise, we intend to file a letter with the Court reflecting our discussions, including our proposed schedule (below), and asking for a scheduling conference. We will of course also indicate your request below as to an opposition date of May 19, but we do not believe that is appropriate under these expedited circumstances, which are wholly the result of the government's actions.

Finally, we do not agree with your proposed modifications to the scheduling order. The foundation of this lawsuit is the government's unlawful "termination" of the VPPP Agreement. The government is required to prepare an administrative record with respect to that agency action (even if it may well need to prepare a further administrative record for subsequent agency action, such as unlawful enforcement actions). And the government is required to respond to our amended complaint.

Please let us know your position by 4:00 p.m. today.

Thanks,

**D. Brandon Trice | Kaplan Martin LLP**

Partner

1133 Avenue of the Americas | Suite 1500

New York, NY 10036

(W) (212) 316-9500 | (M) (202) 803-3532

[btrice@kaplanmartin.com](mailto:btrice@kaplanmartin.com)

**From:** Poscabelo, Christine (USANYS) <[Christine.Poscabelo@usdoj.gov](mailto:Christine.Poscabelo@usdoj.gov)>

**Sent:** Thursday, May 1, 2025 9:43:48 AM

**To:** Dror Ladin <[dladin@earthjustice.org](mailto:dladin@earthjustice.org)>; D. Brandon Trice <[btrice@kaplanmartin.com](mailto:btrice@kaplanmartin.com)>; Maximilian Crema <[mcrema@kaplanmartin.com](mailto:mcrema@kaplanmartin.com)>; Harned, Christian (LAW) <[chharned@law.nyc.gov](mailto:chharned@law.nyc.gov)>; Frank, Andrew <[Andrew.Frank@ag.ny.gov](mailto:Andrew.Frank@ag.ny.gov)>; Roberta Kaplan <[RKaplan@kaplanmartin.com](mailto:RKaplan@kaplanmartin.com)>; Amy Cassidy <[acassidy@sprlawn.com](mailto:acassidy@sprlawn.com)>; Morgan, Elizabeth <[Elizabeth.Morgan@ag.ny.gov](mailto:Elizabeth.Morgan@ag.ny.gov)>; [ch04374@recap.email](mailto:ch04374@recap.email) <[ch04374@recap.email](mailto:ch04374@recap.email)>; efile <[efile@earthjustice.org](mailto:efile@earthjustice.org)>; Mariana Lo <[mlo@earthjustice.org](mailto:mlo@earthjustice.org)>; Elizabeth Knauer <[eknauer@sprlawn.com](mailto:eknauer@sprlawn.com)>; [nduncan@sprlawn.com](mailto:nduncan@sprlawn.com) <[nduncan@sprlawn.com](mailto:nduncan@sprlawn.com)>; jnelson <[jnelson@sprlawn.com](mailto:jnelson@sprlawn.com)>; Mark Chertok <[mchertok@sprlawn.com](mailto:mchertok@sprlawn.com)>; Taylor, Nathan (Law) <[ntaylor@law.nyc.gov](mailto:ntaylor@law.nyc.gov)>; Dane Warren <[dwarren@sprlawn.com](mailto:dwarren@sprlawn.com)>; Docketing <[docketing@kaplanmartin.com](mailto:docketing@kaplanmartin.com)>; Reo, Chris (Law) <[creo@law.nyc.gov](mailto:creo@law.nyc.gov)>; Wagner, Monica <[Monica.Wagner@ag.ny.gov](mailto:Monica.Wagner@ag.ny.gov)>

**Cc:** Farber, David (USANYS) <[David.Farber@usdoj.gov](mailto:David.Farber@usdoj.gov)>; Tarczynska, Dominika (USANYS) <[Dominika.Tarczynska@usdoj.gov](mailto:Dominika.Tarczynska@usdoj.gov)>; Elliott, Stephen M. (CIV) <[Stephen.M.Elliott@usdoj.gov](mailto:Stephen.M.Elliott@usdoj.gov)>; Bruns, Michael (CIV) <[Michael.Bruns@usdoj.gov](mailto:Michael.Bruns@usdoj.gov)>

**Subject:** Re: [EXTERNAL] RE: Activity in Case 1:25-cv-01413-LJL Metropolitan Transportation Authority et al v. Duffy et al Letter

**EXTERNAL MESSAGE:** Use caution when opening attachments, clicking links or responding.

No, that is not my understanding. The April 21 letter reiterates that the VPPP agreement is terminated and directs NYSDOT (and provides TBTA and NYCDOT an opportunity) to “submit a response to FHWA’s New York Division Administrator that either: (1) certifies that the collection of tolls under the CBDTP has ceased; or (2) demonstrates that the continued collection of tolls does not violate 23 U.S.C. § 301” by May 21, 2025. The April 21 letter further states that the FHWA will make a determination as to whether New York is out of compliance with 23 U.S.C. § 301 after May 21—and if, “after evaluating NYSDOT’s response . . . FHWA determines that New York is out of compliance with 23 U.S.C. § 301, FHWA will implement appropriate initial compliance measures” pursuant to 23 CFR 1.36. That is why the issues raised by Plaintiffs are not currently ripe for review.

Christine

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**From:** Dror Ladin <[dladin@earthjustice.org](mailto:dladin@earthjustice.org)>  
**Sent:** Wednesday, April 30, 2025 1:41:37 PM  
**To:** Poscablo, Christine (USANYS) <[Christine.Poscablo@usdoj.gov](mailto:Christine.Poscablo@usdoj.gov)>; D. Brandon Trice <[btrice@kaplanmartin.com](mailto:btrice@kaplanmartin.com)>; Maximilian Crema <[mcrema@kaplanmartin.com](mailto:mcrema@kaplanmartin.com)>; Harned, Christian (LAW) <[chharned@law.nyc.gov](mailto:chharned@law.nyc.gov)>; Frank, Andrew <[Andrew.Frank@ag.ny.gov](mailto:Andrew.Frank@ag.ny.gov)>; Roberta Kaplan <[RKaplan@kaplanmartin.com](mailto:RKaplan@kaplanmartin.com)>; Amy Cassidy <[acassidy@sprlawn.com](mailto:acassidy@sprlawn.com)>; Morgan, Elizabeth <[Elizabeth.Morgan@ag.ny.gov](mailto:Elizabeth.Morgan@ag.ny.gov)>; [ch04374@recap.email](mailto:ch04374@recap.email) <[ch04374@recap.email](mailto:ch04374@recap.email)>; efile <[efile@earthjustice.org](mailto:efile@earthjustice.org)>; Mariana Lo <[mlo@earthjustice.org](mailto:mlo@earthjustice.org)>; Elizabeth Knauer <[eknauer@sprlawn.com](mailto:eknauer@sprlawn.com)>; [nduncan@sprlawn.com](mailto:nduncan@sprlawn.com) <[nduncan@sprlawn.com](mailto:nduncan@sprlawn.com)>; jnelson <[jnelson@sprlawn.com](mailto:jnelson@sprlawn.com)>; Mark Chertok <[mchertok@sprlawn.com](mailto:mchertok@sprlawn.com)>; Taylor, Nathan (Law) <[ntaylor@law.nyc.gov](mailto:ntaylor@law.nyc.gov)>; Dane Warren <[dwarren@sprlawn.com](mailto:dwarren@sprlawn.com)>; Docketing <[docketing@kaplanmartin.com](mailto:docketing@kaplanmartin.com)>; Reo, Chris (Law) <[creo@law.nyc.gov](mailto:creo@law.nyc.gov)>; Wagner, Monica <[Monica.Wagner@ag.ny.gov](mailto:Monica.Wagner@ag.ny.gov)>  
**Cc:** Farber, David (USANYS) <[David.Farber@usdoj.gov](mailto:David.Farber@usdoj.gov)>; Tarczynska, Dominika (USANYS) <[Dominika.Tarczynska@usdoj.gov](mailto:Dominika.Tarczynska@usdoj.gov)>; Elliott, Stephen M. (CIV) <[Stephen.M.Elliott@usdoj.gov](mailto:Stephen.M.Elliott@usdoj.gov)>; Bruns, Michael (CIV) <[Michael.Bruns@usdoj.gov](mailto:Michael.Bruns@usdoj.gov)>  
**Subject:** RE: [EXTERNAL] RE: Activity in Case 1:25-cv-01413-LJL Metropolitan Transportation Authority et al v. Duffy et al Letter

Thanks, Christine. I don't think I understand the proposed modification to the scheduling order. You refer in your email to DOT's April 21 letter as establishing a new schedule for a "final determination," and raise the possibility that there may be no "live controversy exist[ing] after any final determination is made." But this case arises from the Defendants' purported termination of the congestion pricing program, and Secretary Duffy reiterates in the April 21 letter his claim to have already unilaterally "terminated" the VPPP agreement, as well as his demand for an "orderly shutdown" of the tolling program. Is it your understanding that Secretary Duffy has in fact withdrawn his decision, along with his demand for a shutdown of tolling?

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**From:** Poscablo, Christine (USANYS) <[Christine.Poscablo@usdoj.gov](mailto:Christine.Poscablo@usdoj.gov)>  
**Sent:** Wednesday, April 30, 2025 12:39 PM  
**To:** D. Brandon Trice <[btrice@kaplanmartin.com](mailto:btrice@kaplanmartin.com)>; Maximilian Crema <[mcrema@kaplanmartin.com](mailto:mcrema@kaplanmartin.com)>; Harned, Christian (LAW) <[chharned@law.nyc.gov](mailto:chharned@law.nyc.gov)>; Frank, Andrew <[Andrew.Frank@ag.ny.gov](mailto:Andrew.Frank@ag.ny.gov)>; Roberta Kaplan <[RKaplan@kaplanmartin.com](mailto:RKaplan@kaplanmartin.com)>; Amy Cassidy <[acassidy@sprlawn.com](mailto:acassidy@sprlawn.com)>; Morgan, Elizabeth <[Elizabeth.Morgan@ag.ny.gov](mailto:Elizabeth.Morgan@ag.ny.gov)>; [ch04374@recap.email](mailto:ch04374@recap.email); Dror Ladin <[dladin@earthjustice.org](mailto:dladin@earthjustice.org)>; efile <[efile@earthjustice.org](mailto:efile@earthjustice.org)>; Mariana Lo <[mlo@earthjustice.org](mailto:mlo@earthjustice.org)>; Elizabeth Knauer <[eknauer@sprlawn.com](mailto:eknauer@sprlawn.com)>; [nduncan@sprlawn.com](mailto:nduncan@sprlawn.com) <[nduncan@sprlawn.com](mailto:nduncan@sprlawn.com)>; jnelson <[jnelson@sprlawn.com](mailto:jnelson@sprlawn.com)>; Mark Chertok <[mchertok@sprlawn.com](mailto:mchertok@sprlawn.com)>; Taylor, Nathan (Law) <[ntaylor@law.nyc.gov](mailto:ntaylor@law.nyc.gov)>; Dane Warren <[dwarren@sprlawn.com](mailto:dwarren@sprlawn.com)>; Docketing <[docketing@kaplanmartin.com](mailto:docketing@kaplanmartin.com)>

---

<[docketing@kaplanmartin.com](mailto:docketing@kaplanmartin.com)>; Reo, Chris (Law) <[creo@law.nyc.gov](mailto:creo@law.nyc.gov)>; Wagner, Monica <[Monica.Wagner@ag.ny.gov](mailto:Monica.Wagner@ag.ny.gov)>  
**Cc:** Farber, David (USANYS) <[David.Farber@usdoj.gov](mailto:David.Farber@usdoj.gov)>; Tarczynska, Dominika (USANYS) <[Dominika.Tarczynska@usdoj.gov](mailto:Dominika.Tarczynska@usdoj.gov)>; Elliott, Stephen M. (CIV) <[Stephen.M.Elliott@usdoj.gov](mailto:Stephen.M.Elliott@usdoj.gov)>; Bruns, Michael (CIV) <[Michael.Bruns@usdoj.gov](mailto:Michael.Bruns@usdoj.gov)>  
**Subject:** RE: [EXTERNAL] RE: Activity in Case 1:25-cv-01413-LJL Metropolitan Transportation Authority et al v. Duffy et al Letter

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### **External Sender**

Counsel:

We do not see a reason for Plaintiffs to file a motion for a preliminary injunction. As you know, DOT sent a letter on April 21 that sets a May 21 deadline for New York to certify that the collection of tolls has ceased or to demonstrate the lawfulness of the continued collection of tolls. That deadline remains in place, and any final determination will be made after May 21. That process has not played out yet. Accordingly, any issues raised by a May 5 preliminary injunction would not be ripe for review. If, however, Plaintiffs file a motion for a preliminary injunction on May 5, Defendants' position is that their response should be due on May 19 under the local rules.

As for modifications to the scheduling order, we propose the following:

1. Defendants' current deadline to respond to the amended complaints and current deadline to produce the administrative record shall be adjourned sine die.
2. To the extent a live controversy exists after any final determination is made, Plaintiffs and Intervenor-Plaintiffs shall serve further amended complaints within 14 days of that determination.
3. Defendants shall respond to any further amended complaint(s) within 21 days of service.
4. To the extent Defendants determine to answer those further amended complaint(s), Defendants shall produce the administrative record at the same time as the answer(s).
5. Motions to complete or supplement the record, or for extra-record discovery, shall be due four weeks after the administrative record is produced, oppositions to such motions shall be due three weeks thereafter, and replies shall be due two weeks thereafter.
6. The schedule for summary judgment motions, as reflected in ECF No. 57, shall remain the same.

We look forward to hearing back from you.

Christine

Christine S. Poscابو  
U.S. Attorney's Office, SDNY  
Deputy Chief, Civil Division  
86 Chambers Street, 3<sup>rd</sup> Floor  
New York, NY 10007  
Office: (212) 637-2674  
Cell: (646) 983-7431

---

**From:** D. Brandon Trice <[btrice@kaplanmartin.com](mailto:btrice@kaplanmartin.com)>  
**Sent:** Tuesday, April 29, 2025 11:33 AM  
**To:** Poscابو, Christine (USANYS) <[Christine.Poscابo@usdoj.gov](mailto:Christine.Poscابo@usdoj.gov)>; Maximilian Crema <[mcrema@kaplanmartin.com](mailto:mcrema@kaplanmartin.com)>; Harned, Christian (LAW) <[chharned@law.nyc.gov](mailto:chharned@law.nyc.gov)>; Frank, Andrew <[Andrew.Frank@ag.ny.gov](mailto:Andrew.Frank@ag.ny.gov)>; Roberta Kaplan <[RKaplan@kaplanmartin.com](mailto:RKaplan@kaplanmartin.com)>; Amy Cassidy <[acassidy@sprlaw.com](mailto:acassidy@sprlaw.com)>; Morgan, Elizabeth <[Elizabeth.Morgan@ag.ny.gov](mailto:Elizabeth.Morgan@ag.ny.gov)>; [ch04374@recap.email](mailto:ch04374@recap.email); [dladin@earthjustice.org](mailto:dladin@earthjustice.org); [efile@earthjustice.org](mailto:efile@earthjustice.org); [mlo@earthjustice.org](mailto:mlo@earthjustice.org); Elizabeth Knauer <[eknauer@sprlaw.com](mailto:eknauer@sprlaw.com)>; [nduncan@sprlaw.com](mailto:nduncan@sprlaw.com); jnelson <[jnelson@sprlaw.com](mailto:jnelson@sprlaw.com)>; Mark Chertok <[mchertok@sprlaw.com](mailto:mchertok@sprlaw.com)>; Taylor, Nathan (Law) <[ntaylor@law.nyc.gov](mailto:ntaylor@law.nyc.gov)>; Dane Warren <[dwarren@sprlaw.com](mailto:dwarren@sprlaw.com)>; Docketing <[docketing@kaplanmartin.com](mailto:docketing@kaplanmartin.com)>; Reo, Chris (Law) <[creo@law.nyc.gov](mailto:creo@law.nyc.gov)>; Wagner, Monica <[Monica.Wagner@ag.ny.gov](mailto:Monica.Wagner@ag.ny.gov)>  
**Cc:** Farber, David (USANYS) <[David.Farber@usdoj.gov](mailto:David.Farber@usdoj.gov)>; Tarczynska, Dominika (USANYS) <[Dominika.Tarczynska@usdoj.gov](mailto:Dominika.Tarczynska@usdoj.gov)>  
**Subject:** RE: [EXTERNAL] RE: Activity in Case 1:25-cv-01413-LJL Metropolitan Transportation Authority et al v. Duffy et al Letter

Hi Christine,

Following up on the below. While we want to be accommodating, it has been nearly a week since the parties told the Court that they would meet to discuss case management in light of the May 21 deadline set by Defendants. Unless the government will agree not to take any enforcement action, we need to meet and confer by the close of business tomorrow. Otherwise, we will need to unilaterally propose a briefing schedule to the Court, and we intend to propose as follows:

- May 5 for opening PI papers
- May 13 for oppositions
- May 19 for replies

We are of course happy to discuss a more extended schedule if the government will agree to postpone its existing deadlines.

Best,

**D. Brandon Trice | Kaplan Martin LLP**

Partner

1133 Avenue of the Americas | Suite 1500  
New York, NY 10036  
(W) (212) 316-9500 | (M) (202) 803-3532  
[btrice@kaplanmartin.com](mailto:btrice@kaplanmartin.com)

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**From:** Poscabelo, Christine (USANYS) <[Christine.Poscabelo@usdoj.gov](mailto:Christine.Poscabelo@usdoj.gov)>

**Sent:** Friday, April 25, 2025 12:20 PM

**To:** Maximilian Crema <[mcrema@kaplanmartin.com](mailto:mcrema@kaplanmartin.com)>; Harned, Christian (LAW) <[chharned@law.nyc.gov](mailto:chharned@law.nyc.gov)>; Frank, Andrew <[Andrew.Frank@ag.ny.gov](mailto:Andrew.Frank@ag.ny.gov)>; Roberta Kaplan <[RKaplan@kaplanmartin.com](mailto:RKaplan@kaplanmartin.com)>; Amy Cassidy <[acassidy@sprlaw.com](mailto:acassidy@sprlaw.com)>; Morgan, Elizabeth <[Elizabeth.Morgan@ag.ny.gov](mailto:Elizabeth.Morgan@ag.ny.gov)>; [ch04374@recap.email](mailto:ch04374@recap.email); D. Brandon Trice <[btrice@kaplanmartin.com](mailto:btrice@kaplanmartin.com)>; [dladin@earthjustice.org](mailto:dladin@earthjustice.org); [efile@earthjustice.org](mailto:efile@earthjustice.org); [mlo@earthjustice.org](mailto:mlo@earthjustice.org); Elizabeth Knauer <[eknauer@sprlaw.com](mailto:eknauer@sprlaw.com)>; [nduncan@sprlaw.com](mailto:nduncan@sprlaw.com); jnelson <[jnelson@sprlaw.com](mailto:jnelson@sprlaw.com)>; Mark Chertok <[mchertok@sprlaw.com](mailto:mchertok@sprlaw.com)>; Taylor, Nathan (Law) <[ntaylor@law.nyc.gov](mailto:ntaylor@law.nyc.gov)>; Dane Warren <[dwarren@sprlaw.com](mailto:dwarren@sprlaw.com)>; Docketing <[docketing@kaplanmartin.com](mailto:docketing@kaplanmartin.com)>; Reo, Chris (Law) <[creo@law.nyc.gov](mailto:creo@law.nyc.gov)>; Wagner, Monica <[Monica.Wagner@ag.ny.gov](mailto:Monica.Wagner@ag.ny.gov)>

**Cc:** Farber, David (USANYS) <[David.Farber@usdoj.gov](mailto:David.Farber@usdoj.gov)>; Tarczynska, Dominika (USANYS) <[Dominika.Tarczynska@usdoj.gov](mailto:Dominika.Tarczynska@usdoj.gov)>

**Subject:** RE: [EXTERNAL] RE: Activity in Case 1:25-cv-01413-LJL Metropolitan Transportation Authority et al v. Duffy et al Letter

**EXTERNAL MESSAGE:** Use caution when opening attachments, clicking links or responding.

Max,

We will reach out to the parties early next week regarding next steps in this matter.

Thank you.

Christine

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**From:** Maximilian Crema <[mcrema@kaplanmartin.com](mailto:mcrema@kaplanmartin.com)>

**Sent:** Thursday, April 24, 2025 5:25 PM

**To:** Harned, Christian (LAW) <[chharned@law.nyc.gov](mailto:chharned@law.nyc.gov)>; Frank, Andrew <[Andrew.Frank@ag.ny.gov](mailto:Andrew.Frank@ag.ny.gov)>; Roberta Kaplan <[RKaplan@kaplanmartin.com](mailto:RKaplan@kaplanmartin.com)>; Tarczynska, Dominika (USANYS) <[Dominika.Tarczynska@usdoj.gov](mailto:Dominika.Tarczynska@usdoj.gov)>; Amy Cassidy <[acassidy@sprlaw.com](mailto:acassidy@sprlaw.com)>; Morgan, Elizabeth <[Elizabeth.Morgan@ag.ny.gov](mailto:Elizabeth.Morgan@ag.ny.gov)>

<[Elizabeth.Morgan@ag.ny.gov](mailto:Elizabeth.Morgan@ag.ny.gov)>; [ch04374@recap.email](mailto:ch04374@recap.email); D. Brandon Trice <[btrice@kaplanmartin.com](mailto:btrice@kaplanmartin.com)>; [dladin@earthjustice.org](mailto:dladin@earthjustice.org); [efile@earthjustice.org](mailto:efile@earthjustice.org); [mlo@earthjustice.org](mailto:mlo@earthjustice.org); Elizabeth Knauer <[eknauer@sprlaw.com](mailto:eknauer@sprlaw.com)>; [nduncan@sprlaw.com](mailto:nduncan@sprlaw.com); jnelson <[jnelson@sprlaw.com](mailto:jnelson@sprlaw.com)>; Mark Chertok <[mchertok@sprlaw.com](mailto:mchertok@sprlaw.com)>; Taylor, Nathan (Law) <[ntaylor@law.nyc.gov](mailto:ntaylor@law.nyc.gov)>; Dane Warren <[dwarren@sprlaw.com](mailto:dwarren@sprlaw.com)>; Docketing <[docketing@kaplanmartin.com](mailto:docketing@kaplanmartin.com)>; Reo, Chris (Law) <[creo@law.nyc.gov](mailto:creo@law.nyc.gov)>

**Cc:** Poscablo, Christine (USANYS) <[Christine.Poscablo@usdoj.gov](mailto:Christine.Poscablo@usdoj.gov)>; Farber, David (USANYS) <[David.Farber@usdoj.gov](mailto:David.Farber@usdoj.gov)>; Wagner, Monica <[Monica.Wagner@ag.ny.gov](mailto:Monica.Wagner@ag.ny.gov)>

**Subject:** RE: [EXTERNAL] RE: Activity in Case 1:25-cv-01413-LJL Metropolitan Transportation Authority et al v. Duffy et al Letter

Counsel,

The *New York Times* recently reported that DOJ Civil will represent the Defendants going forward. Assuming the *Times*' report is correct, we ask that SDNY advise who at DOJ Civil we should contact about this matter. It is important that the parties meet and confer soon to discuss Secretary Duffy's April 21 letter and case management.

Best,

Max

**Max Crema | Kaplan Martin LLP**

Associate  
1133 Avenue of the Americas | Suite 1500  
New York, New York 10036  
W: (212) 316-9500 | M: (917) 929-0332  
[mcrema@kaplanmartin.com](mailto:mcrema@kaplanmartin.com)

---

**From:** Harned, Christian (LAW) <[chharned@law.nyc.gov](mailto:chharned@law.nyc.gov)>

**Sent:** Thursday, April 24, 2025 1:58 PM

**To:** Frank, Andrew <[Andrew.Frank@ag.ny.gov](mailto:Andrew.Frank@ag.ny.gov)>; Maximilian Crema <[mcrema@kaplanmartin.com](mailto:mcrema@kaplanmartin.com)>; Roberta Kaplan <[RKaplan@kaplanmartin.com](mailto:RKaplan@kaplanmartin.com)>; Tarczynska, Dominika (USANYS) <[Dominika.Tarczynska@usdoj.gov](mailto:Dominika.Tarczynska@usdoj.gov)>; Amy Cassidy <[acassidy@sprlaw.com](mailto:acassidy@sprlaw.com)>; Morgan, Elizabeth

<[Elizabeth.Morgan@ag.ny.gov](mailto:Elizabeth.Morgan@ag.ny.gov)>; [ch04374@recap.email](mailto:ch04374@recap.email); D. Brandon Trice <[btrice@kaplanmartin.com](mailto:btrice@kaplanmartin.com)>; [dladin@earthjustice.org](mailto:dladin@earthjustice.org); [efile@earthjustice.org](mailto:efile@earthjustice.org); [mlo@earthjustice.org](mailto:mlo@earthjustice.org); Elizabeth Knauer <[eknauer@sprlaw.com](mailto:eknauer@sprlaw.com)>; [nduncan@sprlaw.com](mailto:nduncan@sprlaw.com); jnelson <[jnelson@sprlaw.com](mailto:jnelson@sprlaw.com)>; Mark Chertok <[mchertok@sprlaw.com](mailto:mchertok@sprlaw.com)>; Taylor, Nathan (Law) <[ntaylor@law.nyc.gov](mailto:ntaylor@law.nyc.gov)>; Dane Warren <[dwarren@sprlaw.com](mailto:dwarren@sprlaw.com)>; Docketing <[docketing@kaplanmartin.com](mailto:docketing@kaplanmartin.com)>; Reo, Chris (Law) <[creo@law.nyc.gov](mailto:creo@law.nyc.gov)>

**Cc:** Poscablo, Christine (USANYS) <[Christine.Poscablo@usdoj.gov](mailto:Christine.Poscablo@usdoj.gov)>; Farber, David (USANYS) <[David.Farber@usdoj.gov](mailto:David.Farber@usdoj.gov)>; Wagner, Monica <[Monica.Wagner@ag.ny.gov](mailto:Monica.Wagner@ag.ny.gov)>

**Subject:** RE: [EXTERNAL] RE: Activity in Case 1:25-cv-01413-LJL Metropolitan Transportation Authority et al v. Duffy et al Letter

**EXTERNAL MESSAGE:** Use caution when opening attachments, clicking links or responding.

Good afternoon all,

I've added Chris Reo for City DOT. He can join a call tomorrow from 11-11:30am. We are also available at both Monday times provided.

Best,

Christian C. Harned  
Senior Counsel, Environmental Law Division  
(o) 212-356-1676 | (c) 332-323-0864

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**From:** Frank, Andrew <[Andrew.Frank@ag.ny.gov](mailto:Andrew.Frank@ag.ny.gov)>  
**Sent:** Thursday, April 24, 2025 1:42 PM  
**To:** Maximilian Crema <[mcrema@kaplanmartin.com](mailto:mcrema@kaplanmartin.com)>; Roberta Kaplan <[RKaplan@kaplanmartin.com](mailto:RKaplan@kaplanmartin.com)>; Tarczynska, Dominika (USANYS) <[Dominika.Tarczynska@usdoj.gov](mailto:Dominika.Tarczynska@usdoj.gov)>; Amy Cassidy <[acassidy@sprlaw.com](mailto:acassidy@sprlaw.com)>; Morgan, Elizabeth <[Elizabeth.Morgan@ag.ny.gov](mailto:Elizabeth.Morgan@ag.ny.gov)>; Harned, Christian (LAW) <[chharned@law.nyc.gov](mailto:chharned@law.nyc.gov)>; [ch04374@recap.email](mailto:ch04374@recap.email); D. Brandon Trice <[btrice@kaplanmartin.com](mailto:btrice@kaplanmartin.com)>; [dladin@earthjustice.org](mailto:dladin@earthjustice.org); [efile@earthjustice.org](mailto:efile@earthjustice.org); [mlo@earthjustice.org](mailto:mlo@earthjustice.org); Knauer, Elizabeth <[eknauer@sprlaw.com](mailto:eknauer@sprlaw.com)>; [nduncan@sprlaw.com](mailto:nduncan@sprlaw.com); jnelson <[jnelson@sprlaw.com](mailto:jnelson@sprlaw.com)>; Mark Chertok <[mchertok@sprlaw.com](mailto:mchertok@sprlaw.com)>; Taylor, Nathan (Law) <[ntaylor@law.nyc.gov](mailto:ntaylor@law.nyc.gov)>; Dane Warren <[dwarren@sprlaw.com](mailto:dwarren@sprlaw.com)>; Docketing <[docketing@kaplanmartin.com](mailto:docketing@kaplanmartin.com)>  
**Cc:** Poscablo, Christine (USANYS) <[Christine.Poscablo@usdoj.gov](mailto:Christine.Poscablo@usdoj.gov)>; Farber, David (USANYS) <[David.Farber@usdoj.gov](mailto:David.Farber@usdoj.gov)>; Wagner, Monica <[Monica.Wagner@ag.ny.gov](mailto:Monica.Wagner@ag.ny.gov)>  
**Subject:** [EXTERNAL] RE: Activity in Case 1:25-cv-01413-LJL Metropolitan Transportation Authority et al v. Duffy et al Letter

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Also, Monica is free at the Friday times and from 2:30-3:30 on Monday. I've added her to this chain.

---

**From:** Frank, Andrew  
**Sent:** Thursday, April 24, 2025 12:18 PM  
**To:** Maximilian Crema <[mcrema@kaplanmartin.com](mailto:mcrema@kaplanmartin.com)>; Roberta Kaplan

<[RKaplan@kaplanmartin.com](mailto:RKaplan@kaplanmartin.com)>; Tarczynska, Dominika (USANYS) <[Dominika.Tarczynska@usdoj.gov](mailto:Dominika.Tarczynska@usdoj.gov)>;

Amy Cassidy <[acassidy@sprlawn.com](mailto:acassidy@sprlawn.com)>; Morgan, Elizabeth <[Elizabeth.Morgan@ag.ny.gov](mailto:Elizabeth.Morgan@ag.ny.gov)>; [chharned@law.nyc.gov](mailto:chharned@law.nyc.gov); [ch04374@recap.email](mailto:ch04374@recap.email); D. Brandon Trice <[btrice@kaplanmartin.com](mailto:btrice@kaplanmartin.com)>; [dladin@earthjustice.org](mailto:dladin@earthjustice.org); [efile@earthjustice.org](mailto:efile@earthjustice.org); [mlo@earthjustice.org](mailto:mlo@earthjustice.org); Elizabeth Knauer <[eknauer@sprlawn.com](mailto:eknauer@sprlawn.com)>; [nduncan@sprlawn.com](mailto:nduncan@sprlawn.com); jnelson <[jnelson@sprlawn.com](mailto:jnelson@sprlawn.com)>; Mark Chertok <[mchertok@sprlawn.com](mailto:mchertok@sprlawn.com)>; [ntaylor@law.nyc.gov](mailto:ntaylor@law.nyc.gov); Dane Warren <[dwarren@sprlawn.com](mailto:dwarren@sprlawn.com)>; Docketing <[docketing@kaplanmartin.com](mailto:docketing@kaplanmartin.com)>

**Cc:** Poscablo, Christine (USANYS) <[Christine.Poscablo@usdoj.gov](mailto:Christine.Poscablo@usdoj.gov)>; Farber, David (USANYS) <[David.Farber@usdoj.gov](mailto:David.Farber@usdoj.gov)>

**Subject:** RE: Activity in Case 1:25-cv-01413-LJL Metropolitan Transportation Authority et al v. Duffy et al Letter

I'm free tomorrow 11:00-11:30 and in the afternoon, and both of the Monday times.

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**From:** Maximilian Crema <[mcrema@kaplanmartin.com](mailto:mcrema@kaplanmartin.com)>

**Sent:** Thursday, April 24, 2025 12:13 PM

**To:** Frank, Andrew <[Andrew.Frank@ag.ny.gov](mailto:Andrew.Frank@ag.ny.gov)>; Roberta Kaplan <[RKaplan@kaplanmartin.com](mailto:RKaplan@kaplanmartin.com)>; Tarczynska, Dominika (USANYS) <[Dominika.Tarczynska@usdoj.gov](mailto:Dominika.Tarczynska@usdoj.gov)>; Amy Cassidy <[acassidy@sprlawn.com](mailto:acassidy@sprlawn.com)>; Morgan, Elizabeth <[Elizabeth.Morgan@ag.ny.gov](mailto:Elizabeth.Morgan@ag.ny.gov)>; [chharned@law.nyc.gov](mailto:chharned@law.nyc.gov); [ch04374@recap.email](mailto:ch04374@recap.email); D. Brandon Trice <[btrice@kaplanmartin.com](mailto:btrice@kaplanmartin.com)>; [dladin@earthjustice.org](mailto:dladin@earthjustice.org); [efile@earthjustice.org](mailto:efile@earthjustice.org); [mlo@earthjustice.org](mailto:mlo@earthjustice.org); Elizabeth Knauer <[eknauer@sprlawn.com](mailto:eknauer@sprlawn.com)>; [nduncan@sprlawn.com](mailto:nduncan@sprlawn.com); jnelson <[jnelson@sprlawn.com](mailto:jnelson@sprlawn.com)>; Mark Chertok <[mchertok@sprlawn.com](mailto:mchertok@sprlawn.com)>; [ntaylor@law.nyc.gov](mailto:ntaylor@law.nyc.gov); Dane Warren <[dwarren@sprlawn.com](mailto:dwarren@sprlawn.com)>; Docketing <[docketing@kaplanmartin.com](mailto:docketing@kaplanmartin.com)>

**Cc:** Poscablo, Christine (USANYS) <[Christine.Poscablo@usdoj.gov](mailto:Christine.Poscablo@usdoj.gov)>; Farber, David (USANYS) <[David.Farber@usdoj.gov](mailto:David.Farber@usdoj.gov)>

**Subject:** RE: Activity in Case 1:25-cv-01413-LJL Metropolitan Transportation Authority et al v. Duffy et al Letter

Counsel,

Please advise as to your availability to meet and confer. The MTA and TBTA are free tomorrow at 9:30-10 am and 11-11:30 am, and have some flexibility in the afternoon if necessary. We are also free on Monday until 1 pm and from 2:30-3:30 pm.

Best,

Max

**Max Crema | Kaplan Martin LLP**

Associate

1133 Avenue of the Americas | Suite 1500

W: (212) 316-9500 | M: (917) 929-0332

[mcrema@kaplanmartin.com](mailto:mcrema@kaplanmartin.com)

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